



PUBLIC NOTICE

Federal Communications Commission
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DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF AMERICAN FIBER NETWORK, INC. AND CLOSECALL AMERICA, INC. BY BIRCH COMMUNICATIONS, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 10-197

Comments Due: November 2, 2010
Reply Comments Due: November 9, 2010

On September 23, 2010, Birch Communications, Inc. (BCI), Birch Telecom, Inc. (Birch Telecom) (collectively, Birch), American Fiber Network, Inc. (AFN), and CloseCall America, Inc. (CCA) (all together, Applicants), filed an application pursuant to section 63.03 of the Commission's rules for the transfer of certain AFN and CCA assets to Birch.¹

AFN, a Delaware corporation, and its affiliate American Fiber Networks of Virginia, Inc., either offer service or are certificated to offer telecommunications service in all fifty states and the District of Columbia with the exception of Alaska, Delaware, Maine, New Hampshire, Vermont, and West Virginia. CCA, a Delaware corporation, and its affiliate CloseCall America, Inc. of Virginia, are authorized to provide telecommunications service in the following states: Delaware, Florida, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, and Wisconsin.

BCI, a Georgia corporation, is wholly owned by Birch Holdings, also a Georgia corporation. Birch Telecom, a Delaware corporation, is a wholly owned subsidiary of BCI. The following Birch Telecom wholly owned subsidiaries provide interstate telecommunications services: Birch Telecom of the South, Inc., Birch Telecom of the West, Inc., Birch Telecom of the Great Lakes, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Oklahoma, Inc., Birch Telecom of Texas Ltd., LLP, Birch Telecom of Kansas, Inc., Birch Communications of the Northeast, Inc., Ionex Communications, Inc., Ionex Communications South, Inc., and Ionex Communications North, Inc. Birch and its wholly owned subsidiaries either offer service or are certified to offer telecommunications service in the following

¹ 47 C.F.R § 63.03; *see* 47 U.S.C. § 214. Applicants filed an application for transfer of control associated with authorizations for international services. Any action on this domestic 214 application is without prejudice to Commission action on other, pending applications. The Wireline Competition Bureau, on delegated authority, granted a request to withdrawal a transfer of control application filed by AFN, New Earthshell Corporation and MobilePro Corporation on October 18, 2010. *Withdrawal of Request for Authority to Complete a Transfer of Control*, WC Docket No. 10-106 (granted Oct. 18, 2010).

thirty-three states: Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New York, North Carolina, North Dakota, Nebraska, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, and Wyoming. Birch and its wholly owned subsidiaries have applications to provide telecommunications services pending in the following five states: Delaware, Maryland, New Mexico, Oregon, and Virginia. The following U.S. citizens hold a ten percent or greater direct or indirect ownership interest in Birch Holdings: Holcombe Green (66 percent), and R. Kirby Godsey, (32 percent).² Applicants state that no other entity or individual owns a ten percent or greater direct or indirect equity or voting interest in Birch Telecom, BCI, or Birch Holdings.

Pursuant to the Agreement and Plan of Merger, dated as of September 3, 2010, BCI agreed to purchase certain assets and customers of AFN and CCA. The assets to be purchased include customer accounts, accounts receivable, customer agreements and contracts, vendor agreements and contracts and intellectual property associated with the customers currently receiving AFN and CCA services in the following states: Alabama, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin. Applicants assert that the proposed transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules and that a grant of the application will serve the public interest, convenience, and necessity.³

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of American Fiber Network, Inc. and CloseCall America, Inc. by Birch Communications, Inc., WC Docket No. 10-197 (filed Sept. 23, 2010).

GENERAL INFORMATION

The Wireline Competition Bureau finds, upon initial review, that the transfer of assets identified herein is acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 C.F.R. § 63.03(a), interested parties may file comments **on or before November 2, 2010**, and reply comments **on or before November 9, 2010**. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.⁴ Comments must be filed electronically using (1) the Commission's Electronic Comment Filing System (ECFS) or (2) the Federal Government's e-Rulemaking Portal. *See* 47 C.F.R. § 63.03(a) ("All comments on streamlined applications shall be filed electronically . . ."); *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

² R. Kirby Godsey holds his percentage through his individual holdings and through the R. Kirby Godsey 2008 Grantor Retained Annuity Trust.

³ 47 C.F.R. § 63.03(b)(2)(i).

⁴ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction. A grant of the application will be without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or Commission rules.

- Comments may be filed electronically using the Internet by accessing the ECFS, <http://www.fcc.gov/cgb/ecfs/>, or the Federal e-Rulemaking Portal, <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

In addition, e-mail one copy of each pleading to each of the following:

- 1) The Commission's duplicating contractor, Best Copy and Printing, Inc., fcc@bcpiweb.com; phone: (202) 488-5300; fax: (202) 488-5563;
- 2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, tracey.wilson-parker@fcc.gov;
- 3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 4) David Krech, Policy Division, International Bureau, david.krech@fcc.gov; and
- 5) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

Filings and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; telephone: (202) 488-5300; fax: (202) 488-5563; e-mail: fcc@bcpiweb.com; url: www.bcpiweb.com.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

For further information, please contact Tracey Wilson-Parker at (202) 418-1394 or Dennis Johnson at (202) 418-0809.

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